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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bill were introduced in the Rajya Sabha on the 23rd March, 2011 :—

I

BILL NO. IX OF 2011

A Bill to amend the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2011.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988 (hereinafter referred to as the principal Act), in section 2, in clause (e), for the word “nineteen”, the word “forty” shall be substituted.

Amendment
of section 2.

Substitution of new section for section 4.

Exemption from furnishing or maintaining of returns and registers required under certain labour laws.

3. For section 4 of the principal Act, the following section shall be substituted, namely:—

“4. (1) Notwithstanding anything contained in a Scheduled Act, on and from the commencement of the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2011, it shall not be necessary for an employer in relation to any small establishment or very small establishment to which a Scheduled Act applies, to furnish the returns or to maintain the registers required to be furnished or maintained under that Scheduled Act:

Provided that such employer—

(a) furnishes, in lieu of such returns, annual return in Form I; and

(b) maintains, in lieu of such registers,—

(i) registers in Form II and Form III, in the case of small establishments, and

(ii) a register in Form III, in the case of very small establishments,

at the work spot:

Provided further that every such employer shall continue to—

(a) issue wage slips in the Form prescribed in the Minimum Wages (Central) Rules, 1950 made under sections 18 and 30 of the Minimum Wages Act, 1948 and slips relating to measurement of the amount of work done by piece-rated workers required to be issued under the Payment of Wages (Mines) Rules, 1956 made under sections 13A and 26 of the Payment of Wages Act, 1936; and

11 of 1948.

4 of 1936.

(b) file returns relating to accidents under sections 88 and 88A of the Factories Act, 1948 and sections 32A and 32B of the Plantations Labour Act, 1951.

63 of 1948.

69 of 1951.

(2) The annual return in Form I and the registers in Forms II and III and wage slips, wage books and other records, as provided in sub-section (1), may be maintained by an employer on a computer, computer floppy, diskette or other electronic media:

Provided that a printout of such returns, registers, books and records or a portion thereof is made available to the Inspector on demand.

(3) The employer or the person responsible to furnish the annual return in Form I may furnish it to the Inspector or any other authority prescribed under the Scheduled Acts through electronic mail if the Inspector or the authority has the facility to receive such electronic mail.

(4) Save as provided in sub-section (1), all other provisions of a Scheduled Act, including, in particular, the inspection of the registers by, and furnishing of their copies to, the authorities under that Act, shall apply to the returns and registers required to be furnished or maintained under this Act as they apply to the returns and registers under that Scheduled Act.

(5) Where an employer in respect of an establishment referred to in sub-section (1), to whom a Scheduled Act applies, furnishes returns or maintains the registers as provided in the proviso to sub-section (1), nothing contained in that Scheduled Act shall render him liable to any penalty for his failure to furnish any return or to maintain any register under that Scheduled Act.”.

4. For the First Schedule and Second Schedule to the principal Act, the following Schedules shall be substituted, namely:—

Substitution of new Schedules for First Schedule and Second Schedule.

"THE FIRST SCHEDULE

[See section 2(d)]

1. The Payment of Wages Act, 1936 (4 of 1936).
2. The Weekly Holidays Act, 1942 (18 of 1942).
3. The Minimum Wages Act, 1948 (11 of 1948).
4. The Factories Act, 1948 (63 of 1948).
5. The Plantations Labour Act, 1951 (69 of 1951).
6. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955).
7. The Motor Transport Workers Act, 1961 (27 of 1961).
8. The Payment of Bonus Act, 1965 (21 of 1965).
9. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (32 of 1966).
10. The Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970).
11. The Sales Promotion Employees (Conditions of Service) Act, 1976 (11 of 1976).
12. The Equal Remuneration Act, 1976 (25 of 1976).
13. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (30 of 1979).
14. The Dock Workers (Safety, Health and Welfare) Act, 1986 (54 of 1986).
15. The Child Labour (Prohibition and Regulation) Act, 1986 (61 of 1986).
16. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (27 of 1996).

THE SECOND SCHEDULE

[See section 2 (c)]

FORM I

[See section 4 (1)]

ANNUAL RETURN

(To be furnished to the Inspector or the authority specified for this purpose under the respective Scheduled Act before the 31st January of the following year)

(ending 31st December _____)

1. Name of the establishment, its postal address, telephone number, FAX number, email address and location _____
2. Name and postal address of the employer _____
3. Name and address of principal employer, if the employer is a contractor _____

4. Name of the Manager responsible for supervision and control _____

(i) Name of business, industry, trade or occupation carried on by the employer _____

(ii) Date of commencement of the business, industry, trade or occupation _____

5. Employer's number under ESI/EPF/Welfare Fund/PAN No., if any _____

6. Maximum number of workers employed on any day during the year to which this return relates to:

Category	Highly Skilled	Skilled	Semi-skilled	Un-skilled
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Male

Female

Children (those
who have not
completed 18 years
of age)

Total

7. Average number of workers employed during the year:

8. Total number of mandays worked during the year:

9. Number of workers during the year:

(a) Retrenched :

(b) Resigned :

(c) Terminated :

10. Retrenchment compensation and terminal benefits paid (provide information completely in respect of each worker) _____

11. Mandays lost during the year on account of—

(a) Strike :

(b) Lockout :

(c) Fatal accident :

(d) Non-fatal accidents :

12. Reasons for strike or lockout :

13. Total wages paid (wages and overtime to be shown separately):

14. Total amount of deductions from wages made :

15. Number of accidents during the years :

Reported to Inspector of Factories/Dock Safety	Reported to Employees' State Insurance Corporation	Reported to Workmen's Compensation Commissioner	Others
Fatal			
Non-fatal			

16. Compensation paid under the Workmen's Compensation Act, 1923 (8 of 1923) during the year _____

(i) Fatal accidents :

(ii) Non-fatal accidents :

17. Bonus*

(a) Number of employees eligible for bonus :

(b) Percentage of bonus declared and number of employees who were paid bonus :

(c) Amount payable as bonus :

(d) Total amount of bonus actually paid and date of payment :

Signature of the Manager/Employer
with full name in capital letters.

Place:

Date:

ANNEXURE TO FORM I*

Name and address of the Contractor	Period of contract From to	Nature of work	Maximum number of workers employed by each contractor	Number of days worked	Number of mandays worked
1	2	3	4	5	6

*Delete, if not applicable.

FORM II

[See section 4(I)]

REGISTER OF PERSONS EMPLOYED-CUM-EMPLOYMENT CARD

Name of the establishment, address, telephone number, FAX number and e-mail address _____

Location of work _____

Name and address of principal employer if the employer is a contractor _____

1. Name of workman/employee _____
2. Father's/Husband's name _____
3. Address:
 - (i) Present _____
 - (ii) Permanent _____
4. Name and address of the nominee/next of kin _____
5. Designation/Category _____
6. Date of Birth/Age _____
7. Educational qualifications _____
8. Date of entry _____
9. Worker's ID No./ESI/EPF/L.W.F. No. _____
10. If the employed person is below 14 years, whether a certificate of age is maintained _____
11. Sex: Male or Female _____
12. Nationality _____
13. Date of termination of employment with reason _____

14. Signature/thumb impression of worker/employee _____
15. Signature of the employer/Authorised officer with designation _____

Signature of the contractor/
authorised representative
of the principal employer.

FORM III

[See section 4 (1)]

MUSTER ROLL-CUM-WAGE REGISTER

Name of the establishment and address _____

Location of work _____

Name and address of employer _____

1	2	3	4	5	6	7	8
Serial number	Name of the worker (ID No. if any) and father's/ husband's name	Designation/ category/nature of work performed	Attendance (Dates of the month 1, 2, ... to 31)	Leave due (Earned leave and other kind of admissible leave)	Leave availed (specify)	Wage rate/ pay or piece rate/wages per unit	Other allowances, e.g. (a) Dearness Allowance (b) House Rent Allowance (c) Night Allowances (d) Displacement Allowance (e) Outward Journey Allowance
							(a)
							(b)
							(c)
							(d)
							(e)
9	10	11	12	13	14	15	16
Overtime worked Number of hours in the month	Amount of overtime wages	Amount of advance and purpose of advance	Total/gross earnings	Deduction e.g. (a) Provident Fund (b) Advance (c) Employees' State Insurance (d) Other amount	Net amount payable (12-13)	Signature/ receipt of wages/ allowances for column number 14	Remarks
				(a)			
				(b)			
				(c)			
				(d)			

Certificate by the principal employer if the employer is contractor.

This is to certify that the contractor has paid wages to workmen employed by him as shown in this register.

Signature of principal employer/
authorised representative of principal employer."

STATEMENT OF OBJECTS AND REASONS

Parliament enacted from time to time a number of labour laws for regulating employment and conditions of service of workers. Whenever a new law was enacted, it prescribed certain registers to be maintained by the employers. Simultaneously, the laws also prescribed for furnishing of returns of various details by the employers to the concerned enforcing authorities. Over the years, the numbers of such registers to be maintained and the returns to be furnished by the employers under different labour laws have increased considerably. At present, the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988 has limited application for providing exemption only to establishments employing up to nineteen persons.

2. There have been persistent demands from various quarters to simplify the forms of various returns to be furnished and registers to be maintained by the employers under different labour laws and also to expand the coverage of the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988 to establishments employing more than nineteen persons. After the introduction of computers in all spheres of business, demand has also been made to design computer-based forms and make provision for transmitting the returns electronically.

3. With a view to expanding the coverage of the aforesaid Act to establishments employing up to five hundred workers and to prescribe simplified user friendly forms and to provide for maintenance of registers or records in computer, computer floppy, diskette or other electronic media and submit the returns through electronic mail, the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment and Miscellaneous Provisions Bill, 2005 was introduced in Rajya Sabha on the 22nd August, 2005. The Bill was referred to the Department Related Parliamentary Standing Committee on Labour for examination and report. The Standing Committee advised to discuss the provisions of the Bill with the employers' and employees' organisations and to redraft the amendments on the basis of consensus as may be reached. Accordingly, several meetings were held with the representatives of the employers' and employees' organisations. Since giving effect to the recommendations of the Parliamentary Standing Committee and also the suggestions made by various employers' and employees' organisations required amendments to almost all the clauses of the Bill, it is considered appropriate to withdraw the aforesaid Bill and to introduce a fresh Bill.

4. The proposed Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Bill, 2011, *inter alia*, seeks to provide for the following:—

- (i) to revise the definition of the expression "small establishment" so as to cover those establishments in which not less than ten and not more than forty persons are employed or were employed on any day of the preceding twelve months within the meaning of that expression instead of not less than ten and not more than nineteen persons, as at present;
- (ii) to provide for maintenance of registers and returns in computer, computer floppy, diskette or other electronic media and to submit returns through electronic mail;
- (iii) to substitute the First Schedule to the Act for applying the provisions of the Act to sixteen enactments in place of nine enactments, as at present; and
- (iv) to substitute the Second Schedule to the Act to specify new Forms instead of the present Forms A, B, C, D and E.

5. The Bill seeks to achieve the above objectives.

MALLIKARJUN KHARGE

II

BILL NO. X OF 2011

A Bill further to amend the Mines Act, 1952.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Mines (Amendment) Act, 2011.

Short title
and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

35 of 1952.

2. In the Mines Act, 1952 (hereinafter referred to as the principal Act), in the long title, for the words “regulation of labour and safety in mines”, the words “regulation of conditions of work and welfare of persons employed in mines and safety in mines and to provide for matters connected therewith or incidental thereto” shall be substituted.

Amendment
of long title.

3. In section 1 of the principal Act, in sub-section (2), after the words “whole of India”, the words and figures “including the territorial waters, continental shelf, exclusive economic zone and other maritime zones of India as defined under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976” shall be inserted.

80 of 1976.

Amendment
of section 1.

Amendment of
section 2.

4. In section 2 of the principal Act, in sub-section (1),—

(i) in clause (c), for the words “every person”, the words “every person, being superior to the manager” shall be substituted;

(ii) after clause (g), the following clause shall be inserted, namely:—

“(ga) “foreign company” means the company falling under section 591 of the Companies Act, 1956;”;

1 of 1956.

(iii) for clause (l), the following clause shall be substituted, namely:—

“(l) “owner”, when used in relation to a mine, means a person or authority having ultimate control over the affairs of the mine:

Provided that where the mine belongs to,—

(i) a company incorporated in India, the managing director thereof, and if there is no managing director, all the whole-time directors of the board of directors of the company, as the case may be, shall be the owner;

(ii) a foreign company, the principal officer by whatever name called, including its director and secretary, shall be the owner;

(iii) a firm or other association of persons, all the individual partners or members thereof, shall be the owner:

Provided further that, in the case of a body corporate without a managing director, or in the case of a firm or other association of persons, where a specific nomination has been made, in favour of a whole-time director, managing partner or member, as the case may be, such whole-time director, managing partner and member shall be the owner:

Provided also that where a mine belongs to,—

(i) a local authority or body, the person having the ultimate control over such authority or body;

(ii) a person who has the prospecting licence, mining lease or mining right, such person;

(iii) a liquidator or receiver, such liquidator or receiver, as the case may be, shall be the owner:

Provided also that any contractor or sub-lessee for the working of a mine or any part thereof, shall also be the owner, but, not so as to exempt the owner from any liability.

Explanation.— For the purposes of this clause,—

(i) the expressions “body corporate”, “board of directors”, “company”, “director”, “firms” and “managing director” shall have the same meanings respectively assigned to them under the Companies Act, 1956;

1 of 1956.

(ii) the expressions “prospecting licence” and “mining lease” shall have the same meanings respectively assigned to them under the Mines and Minerals (Development and Regulation) Act, 1957;’.

67 of 1957.

5. After section 18 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
18A.

‘18A. (1) Without prejudice to any of the provisions of this Act or any other law for the time being in force, the owner of every mine shall appoint,—

Appointment
of officials
and agents in
mines.

(a) sufficient number of his officials, as may be prescribed, for the effective supervision of all operations, equipment, installations and sites, in the mine of such owner to ensure compliance with the provisions of the Act and of the rules and regulations made and of any order issued, thereunder;

(b) such number of his agents, as may be prescribed, specifying their functions, duties and responsibilities in respect of each of his mines.

Explanation.—For the purpose of this sub-section, the expression “official” means a person, having such qualifications, as may be prescribed and appointed by, or, on behalf of the owner, to perform the duties of supervision in mine of such owner or part thereof, in such capacity as may be prescribed.

(2) Every agent referred to in clause (b) of sub-section (1), shall,—

(a) possess such qualifications and experience, as may be prescribed;

(b) be resident in India for at least one hundred and eighty-two days during any year or such other period as may be prescribed.

(3) The owner shall, in respect of every agent referred to in clause (b) of sub-section (1), forthwith send notice of appointment of such agent to the Chief Inspector and the Inspector, specifying the functions, duties and responsibilities of every such agent in respect of the mine for which he is appointed as such.’

6. In section 58 of the principal Act, after clause (a), the following clauses shall be inserted, namely:—

Amendment
of section 58.

“(aa) number of officials to be appointed under clause (a) of sub-section (1) of section 18A;

(ab) number of the agents to be appointed under clause (b) of sub-section (1) of section 18A;

(ac) the qualifications of the officials to be appointed under sub-section (1) of section 18A;

(ad) the qualifications and experience of the agents under clause (a) of sub-section (2) of section 18A;

(ae) the period during which the agent shall be resident in India under clause (b) of sub-section (2) of section 18A;”.

7. In section 63 of the principal Act,—

Amendment
of section 63.

(a) in sub-section (1), for the words “five hundred rupees”, the words “fifty thousand rupees” shall be substituted;

(b) in sub-section (2), for the words “three hundred rupees”, the words “thirty thousand rupees” shall be substituted.

8. In section 64 of the principal Act, for the words “one thousand rupees”, the words “one lakh rupees” shall be substituted.

Amendment
of section 64.

9. In section 65 of the principal Act, for the words “two hundred rupees”, the words “twenty thousand rupees” shall be substituted.

Amendment
of section 65.

10. In section 66 of the principal Act, for the words “one thousand rupees”, the words “one lakh rupees” shall be substituted.

Amendment
of section 66.

11. In section 67 of the principal Act, for the words “one thousand rupees”, the words “one lakh rupees” shall be substituted.

Amendment
of section 67.

12. In section 68 of the principal Act, for the words “five hundred rupees”, the words “fifty thousand rupees” shall be substituted.

Amendment
of section 68.

Amendment
of section 69.

13. In section 69 of the principal Act, for the words “three months, or with fine which may extend to two thousand and five hundred rupees”, the words “one year, or with fine which may extend to two lakh and fifty thousand rupees” shall be substituted.

Amendment
of section 70.

14. In section 70 of the principal Act, in sub-sections (1) and (2), for the words “five hundred rupees” at both the places where they occur, the words “fifty thousand rupees” shall be substituted.

Amendment
of section
72A.

15. In section 72A of the principal Act, for the words “six months, or with fine which may extend to two thousand rupees”, the words “one year, or with fine which may extend to two lakh rupees” shall be substituted.

Amendment
of section
72B.

16. In section 72B of the principal Act,—

(a) for the words “two years, and shall also be liable to fine which may extend to five thousand rupees”, the words “five years and shall also be liable to fine which may extend to five lakh rupees” shall be substituted;

(b) for the words “two thousand rupees”, the words “two lakh rupees” shall be substituted.

Amendment
of section
72C.

17. In section 72C of the principal Act,—

(a) in sub-section (1),—

(i) in clause (a), for the words “two years, or with fine which may extend to five thousand rupees”, the words “five years or with fine which may extend to five lakh rupees” shall be substituted;

(ii) in clause (b), for the words “three thousand rupees”, the words “three lakh rupees” shall be substituted;

(iii) in clause (c), for the words “three months, or with fine which may extend to one thousand rupees”, the words “one year, or with fine which may extend to one lakh rupees” shall be substituted;

(iv) in the proviso, for the words “shall not be less than three thousand rupees”, the words “shall not be less than three lakh rupees” shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Where the contraventions falls under any of the three clauses of sub-section (1), the award of punishment shall be in accordance with the maximum punishment provided under the clauses being so contravened.”.

Amendment
of section
73.

18. In section 73 of the principal Act,—

(a) for the words “which may extend to three months, or with fine which may extend to one thousand rupees,” the words “which may extend to one year or with fine which may extend to one lakh rupees,” shall be substituted;

(b) the following proviso shall be inserted, namely:—

“Provided that in case the contraventions of any provision of this Act or of any rule, or regulation, bye-law or of any order made thereunder continues, additional fines shall be imposed which may extend to one thousand rupees for each day on which the contravention is continued, and, if such contravention continues beyond a period of one year after the date of conviction or contravention, the offender shall be punishable with imprisonment for a term, which may extend to seven years.”.

19. After section 74 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 74A.

“74A. Where any person is prosecuted, or proceeded against, for contravening any of the provisions of this Act or of any rule, or regulation, or bye-law or order made thereunder, it shall be for the person who is alleged to have failed to comply with such duty or requirement, to prove that it was not reasonably practicable, or, as the case may be, all practicable measures, were taken, to satisfy the safety requirements, duty or other requirements, as the case may be.”.

Burden of proof in certain cases.

20. In section 76 of the principal Act,—

Amendment of section 76.

(a) for the words “all or any of the directors thereof”, the words “managing director, all or any of the directors thereof or where the owner of a mine is a foreign company, all or any of its principal officers, by whatever name called, including its director or secretary” shall be substituted;

(b) in the proviso,—

(i) in clauses (a), (b) and (c), the words “or managers” occurring at the end, shall be omitted;

(ii) after clause (c), the following clause shall be inserted, namely:—

“(d) in the case of a foreign company, any of its principal officers, by whatever name called, including its director or secretary,”;

(iii) after clause (d) as so inserted, in the long line, the words “or manager” occurring at both the places, shall be omitted.

21. After section 76 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 76A.

“76A. Nothing contained in this Act shall absolve any person from his liability under this Act, if such person had or has ultimate control over the affairs of the business of the mines.”.

Continuance of liability.

STATEMENT OF OBJECTS AND REASONS

The Mines Act, 1952, was enacted with a view to amending and consolidating the law relating to the regulation of labour and safety in mines. The Act, *inter alia*, regulates the working conditions in mines by providing for measures to be taken for the safety of the workers employed therein and certain amenities for them. The said Act was amended in 1983 by the Mines (Amendment) Act, 1983, *inter alia*, to provide for the prohibition of the employment of persons below eighteen years of age, inspection of mines by workers representatives, safety committees and to regulate the use of machinery to take care of the hazards associated with the introduction of new types of machines.

2. Since the last amendment was made in 1983 there have been several developments in the area of technology, scale of operation, working environment and work practices in coal, non-coal and oil sector. Operations are getting more and more mechanised with introduction of heavy machines, shallow deposits are getting depleted and mines are becoming deeper and complicated and operators from other parts of the world have started acquiring mining rights and managing mining operations within our country. This has created a new safety and health risk scenario at the work places in these sectors. In view of such developments the amendments have been proposed to the Bill mainly to keep pace with the changes at work places in the mining sector and thereby attempting to effectively manage the safety and health risk to the work persons employed in these sectors.

3. The Mines (Amendment) Bill, 2011 proposes to amend the Mines Act, 1952, *inter alia*, to,—

(a) amend the “long title” of the Act so as to reflect therein the regulation of conditions of work and welfare of persons employed in mines;

(b) clarify that the applicability of the Act to whole of India includes up to the Exclusive Economic Zone and Maritime Zones of India as defined under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976;

(c) substitute the definition of “owner” so as to provide that a person or authority having ultimate control over the affairs of the mine be the owner and specifically provide for the person who would be the owner in the case of (i) company incorporated in India; (ii) foreign company; (iii) firm and other association of persons;

(d) define “foreign company” with reference to the Companies Act, 1956;

(e) make provisions for appointment of sufficient number of “officials” having prescribed qualifications for the effective supervision of all operations, equipment, installation and sets to ensure compliance of the provisions of the Act and rules;

(f) increase the penalties,—

(i) in case of obstruction of Chief Inspector or an Inspector in the discharge of his duties under section 63, from “five hundred rupees” to “fifty thousand rupees”;

(ii) in case of falsification of records under section 64, from “one thousand rupees” to “one lakh rupees”;

(iii) in case of using false certificate of fitness under section 65, from “two hundred rupees” to “twenty thousand rupees”;

(iv) in case of omission to furnish plans, etc., under section 66, from "one thousand rupees" to "one lakh rupees";

(v) in case of contravention of provisions regarding employment of labour under section 67, from "one thousand rupees" to "one lakh rupees";

(vi) in case of employment of persons below eighteen years of age under section 68, from "five hundred rupees" to "fifty thousand rupees";

(vii) in case of failure to appoint a manager of mines, in contravention of the provisions of section 17, under section 69, from "three months, or with fine which may extend to two thousand and five hundred rupees" to "one year, or with fine which may extend to two lakh and fifty thousand rupees";

(viii) in case of failure to give notice of accident, in contravention of the provisions of sub-section (1) of section 23, under section 70, from "five hundred rupees" to "fifty thousand rupees";

(ix) in case of contravention of certain regulations under section 72A, from "six months, or with fine which may extend to two thousand rupees" to "one year, or with fine which may extend to two lakh rupees";

(x) in case of contravention of the any order issued under section 22 relating to powers of inspectors when causes of danger not expressly provided against exist or when employment of persons is dangerous, under section 72B, from "two years imprisonment and fine which may extend to five thousand rupees" to "five years imprisonment and fine which may extend to five lakh rupees";

(xi) provided in section 72C of the Act for contravention of law with dangerous results;

(xii) provided in section 73 of the Act for contravention of any provision of the Act or of any rule or regulation or bye-law or of any order made thereunder of which no penalty is specified in the Act;

(g) insert a new section 74A so as to shift the burden of proof upon the person who is being prosecuted or proceeded against to prove that it was not reasonably practicable, or, all practicable measures to satisfy the safety requirements were taken;

(h) amend section 76 so as to enlarge the scope to cover the foreign companies and to take away the "manager" out of the scope of the said section; and

(i) to insert a new section 76A to provide that the person who has actual ultimate control over the affairs of the mines would continue to be liable for the contravention of the provisions of the Act or of any rule or regulation or bye-law or order made thereunder.

4. With all the above amendments new mining legislation has become utmost necessary that should not only embrace the current needs of the prevailing environment but also address the future needs of the profession.

5. The bill seeks to achieve the above objectives.

MALLIKARJUN KHARGE

III

BILL NO. XIV OF 2011

A Bill to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

WHEREAS clause (3) of article 15 of the Constitution, *inter alia*, empowers the State to make special provisions for children;

AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child;

AND WHEREAS it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child;

AND WHEREAS it is imperative that the law operates in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child;

AND WHEREAS the State Parties to the Convention on the Rights of the Child are required to undertake all appropriate national, bilateral and multilateral measures to prevent—

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials;

AND WHEREAS sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Protection of Children from Sexual Offences Act, 2011. Short title,
extent and
commencement.
- (2) It extends to the whole of India, except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. (1) In this Act, unless the context otherwise requires. —

Definitions.

- (a) "aggravated sexual assault" has the same meaning as assigned to it in section 9;
- (b) "aggravated penetrative sexual assault" has the same meaning as assigned to it in section 5;
- (c) "armed forces or security forces" means armed forces of the Union or security forces or police forces, as specified in the Schedule;
- (d) "child" means any person below the age of eighteen years save as provided otherwise;
- (e) "domestic relationship" shall have the same meaning as assigned to it in clause (f) of section 2 of the Protection of Women from Domestic Violence Act, 2005;
- (f) "penetrative sexual assault" has the same meaning as assigned to it in section 3;
- (g) "sexual assault" has the same meaning as assigned to it in section 7;
- (h) "sexual harassment" has the same meaning as assigned to it in section 11;
- (i) "shared household" means a household where the person charged with the offence lives in a domestic relationship with the parent of the child and the child;
- (j) "Special Court" means a court designated as such under section 28;
- (k) "Special Public Prosecutor" means a Public Prosecutor appointed under section 32;

43 of 2005.

45 of 1860.
2 of 1974.
56 of 2000.
21 of 2000.

(2) The words and expressions used herein and not defined but defined in the Indian Penal Code, the Code of Criminal Procedure, 1973, the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Information Technology Act, 2000 shall have the meanings respectively assigned to them in the said Codes or the Acts.

CHAPTER II

SEXUAL OFFENCES AGAINST CHILDREN

A.—PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

3. A person is said to commit "penetrative sexual assault" if—

Penetrative
sexual assault.

- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person:

Provided that where such penetrative sexual assault is committed against a child between sixteen to eighteen years of age, it shall be considered whether the consent for such an act has been obtained against the will of the child or the consent has been obtained by use of violence, force, threat to use force, intoxicants, drugs, impersonation, fraud, deceit, coercion, undue influence, threats, when the child is sleeping or unconscious or where the child does not have the capacity to understand the nature of the act or to resist it.

Explanation I.— For the purposes of this section,—

(a) "consent" means the unequivocal voluntary agreement where the person has by words, gestures, or any form of non-verbal communication, communicated willingness to participate in the act referred to in this section;

(b) "unequivocal voluntary agreement" means willingness given for specific and be limited to the express act consented to under this section.

Explanation II.— A child, who does not offer actual physical resistance to penetrative sexual assault is not by reason only of that fact, to be regarded as consenting to the sexual activity.

Punishment
for
penetrative
sexual assault.

4. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

B.—AGGRAVATED PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Aggravated
penetrative
sexual assault.

5. (a) Whoever, being a police officer, commits penetrative sexual assault on a child —

- (i) within the limits of the police station or premises at which he is appointed; or
- (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or
- (iii) in the course of his duties or otherwise; or

(b) Whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—

- (i) within the limits of the area to which the person is deployed; or
- (ii) in any areas under the command of the forces or armed forces; or
- (iii) in the course of his duties or otherwise; or
- (iv) where the said person is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits penetrative sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution, commits penetrative sexual assault on a child in that institution; or

(g) whoever commits gang penetrative sexual assault on a child; or

(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits penetrative sexual assault causing grievous hurt or causing injury to the sexual organs of the child; or

(j) whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill or to become mentally unfit to perform regular tasks, temporarily or permanently; or

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, mentally ill or mentally unfit to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or

(m) whoever commits penetrative sexual assault on a child below twelve years; or

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or any where else; or

(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or

(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

(s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or

(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force,

is said to commit aggravated penetrative sexual assault.

6. Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

Punishment
for aggravated
penetrative
sexual assault.

C.—SEXUAL ASSAULT AND PUNISHMENT THEREFOR

7. Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault:

Sexual Assault.

Provided that where such penetrative sexual assault is committed against a child between sixteen to eighteen years of age, it shall be considered whether the consent for such act has been obtained against the will of the child or the consent has been obtained by use of violence, force, threat to use force, intoxicants, drugs, impersonation, fraud, deceit, coercion, undue influence, threats, when the child is sleeping or unconscious, or where the child does not have the capacity to understand the nature of the act or to resist it.

Explanation I.— For the purposes of this section,—

(a) "consent" means the unequivocal voluntary agreement where the person has by words, gestures, or any form of non-verbal communication, communicated willingness to participate in the act referred to in this section;

(b) "unequivocal voluntary agreement" means willingness given for specific and be limited to the express act consented to under this section.

Explanation II.— A child who does not offer actual physical resistance to sexual activity is not by reason only of that fact, to be regarded as consenting to the sexual assault.

Explanation III.— Any question which involves "sexual intent" shall be a question of fact.

Punishment for sexual assault.

8. Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

D.—AGGRAVATED SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Aggravated Sexual Assault.

9. (a) Whoever, being a police officer, commits sexual assault on a child—

(i) within the limits of the police station or premises where he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) when the person is known or identified as a police officer; or

(b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the security or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution, commits sexual assault on a child in that institution; or

(g) whoever commits gang sexual assault on a child ; or

(h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits sexual assault causing grievous hurt or causing injury to the sexual organs of the child; or

(j) whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill or to become mentally unfit to perform regular tasks, temporarily or permanently; or

(ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, mentally ill or mentally unfit to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or

(l) whoever commits sexual assault on the child more than once or repeatedly; or

(m) whoever commits sexual assault on a child below twelve years; or

(n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or

(o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or

(p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits sexual assault on a child knowing the child is pregnant; or

(r) whoever commits sexual assault on a child and attempts to murder the child; or

(s) whoever commits sexual assault on a child in the course of communal or sectarian violence; or

(t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force,

is said to commit aggravated sexual assault.

10. Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Punishment
for aggravated
sexual assault.

E.—SEXUAL HARASSMENT AND PUNISHMENT THEREFOR

11. A person is said to commit sexual harassment upon a child when such person with sexual intent,—

Sexual
harassment.

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through any means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act.

Explanation.—Any question which involves “sexual intent” shall be a question of fact.

12. Whoever commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

Punishment
for sexual
harassment.

CHAPTER III

USING CHILD FOR PORNOGRAPHIC PURPOSES AND PUNISHMENT THEREFOR

13. Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes—

Use of child for
pornographic
purposes.

(a) representation of the sexual organs of a child;

(b) usage of a child engaged in real or simulated sexual acts (with or without penetration);

(c) the indecent or obscene representation of a child,

shall be guilty of the offence of using a child for pornographic purposes.

Explanation.—For the purposes of this section, the expression “use a child” shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.

Punishment for using child for pornographic purposes.

14. (1) Whoever, uses a child or children for pornographic purposes shall be liable for rigorous imprisonment which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine.

(2) If the person using the child for pornographic purposes commits any offence referred to in section 3, or section 5, or section 7, or section 9, by directly participating in pornographic acts, he shall be punishable for life imprisonment and shall also be liable to fine.

Punishment for storage of pornographic material involving child.

15. Any person, who stores, for commercial purposes any pornographic material in any form involving a child shall be punished with imprisonment of either description which may extend to three years or with fine or with both.

CHAPTER IV

ABETMENT OF AND ATTEMPT TO COMMIT AN OFFENCE

Abetment of an offence.

16. A person abets an offence, who—

Firstly.— Instigates any person to do that offence; or

Secondly.— Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that offence.

Explanation I.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

Explanation II.—Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Punishment for abetment.

17. Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.

Explanation. — An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.

Punishment for attempt to commit an offence.

18. Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of either description which may extend to one year or with fine or with both.

CHAPTER V

PROCEDURE FOR REPORTING OF CASES

Reporting of offences.

19. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 2 of 1974. any person (including the child), who apprehends that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,—

(a) the Special Juvenile Police Unit; or

(b) the local police.

(2) Every report given under sub-section (1) shall be—

- (a) ascribed an entry number and recorded in writing;
- (b) be read over to the informant;
- (c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be required.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

20. Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, on coming across any material or object which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be.

Obligation of media, studio and photographic facilities to report cases.

21. (1) Any person, who fails to report an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

Punishment for failure to report or record a case.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provisions of sub-section (1) shall not apply to a child under this Act.

22. (1) Any person, who makes false complaint or provides false information against any person, in respect of an offence committed on a child below the age of sixteen years, under sections 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

Punishment for false complaint or false information.

(2) Where a false complaint has been made or false information has been provided by a child, being less than sixteen years, no punishment shall be imposed on such child.

(3) Where a false complaint has been made or false information has been provided by a child being more than sixteen years, and it is proved that the complaint was made or information was provided with his own informed decision and in such case, the child shall be sent to the Juvenile Justice Board constituted under section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000, for suitable remedial action.

(4) Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimising such child in any of the offences under this Act, shall be punished with imprisonment which may extend to one year or with fine or with both.

Procedure for media.

23. (1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, and without the consent of the child or his parents or guardian, who may be involved in an offence under this Act either as an accused or as a victim, which may have the effect of lowering his character or infringing upon his privacy.

(2) No reports in any media shall disclose, without the consent of the child or his parents or guardian, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child.

(3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

(4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than one year but which may extend to two years or with fine or with both.

CHAPTER VI

PROCEDURES FOR RECORDING STATEMENT OF THE CHILD

Recording of statement of a child.

24. (1) For the purposes of recording the statement of the child, the provisions of section 157 of the Code of Criminal Procedure, 1973 shall apply. 2 of 1974.

(2) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973, the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence: 2 of 1974.

Provided that the Magistrate may wherever necessary, take the assistance of an interpreter while recording the statement of the child:

Provided further that the Magistrate may, in case of a child having a mental or physical disability, seek the assistance of a special educator or an expert in that field to record the statement of the child.

(3) Notwithstanding anything contained in section 164 of the Code of Criminal Procedure, 1973 where any statement of the child is recorded by audio-video electronic means, it shall be recorded in the presence of the parents of the child or any other person in whom the child has trust or confidence. 2 of 1974.

(4) The provisions contained in the first proviso to sub-section (1) of section 164 of the Code of Criminal Procedure, 1973 shall, so far it permits the presence of the advocate of the accused shall not apply in this case. 2 of 1974.

(5) The magistrate shall provide to the child or his representative, a copy of the document specified under section 207 of the Code of Criminal Procedure, 1973, upon the final report being filed by the police under section 173 of that Code. 2 of 1974.

Police officer not to be in uniform.

25. Without prejudice to the provisions contained in sub-section (1) of section 24, the police officer while recording the statement of the child shall not be present in his uniform.

Accused not to be in contact.

26. The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.

Medical examination of a child.

27. The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973. 2 of 1974.

CHAPTER VII

SPECIAL COURTS

Designation of Special Courts.

28. (1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette,

designate for each district, a Court of Session to be a Special Court to try the offences under the Act.

2 of 1974. (2) While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

21 of 2000. (3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000, shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online.

29. Where a person is prosecuted for violating any of the provisions under sections 3, 5, 7 and section 9 of this Act, and where the victim is a child below the age of sixteen years, the Special Court shall presume, that such person has committed the offence, unless the contrary is proved. Presumption as to certain offences.

30. (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. Presumption of culpable mental state.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

2 of 1974. 31. Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor. Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court.

32. (1) The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act. Special Public Prosecutors.

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under sub-section (1) only if he had been in practice for not less than seven years as an advocate.

2 of 1974. (3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and provision of that Code shall have effect accordingly.

CHAPTER VIII

PROCEDURE AND POWERS OF SPECIAL COURTS AND RECORDING OF EVIDENCE

33. (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts. Procedure and powers of Special Court.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial, except with the consent of the child or his parents or guardian.

Explanation.—For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of compensation to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 for trial before a Court of Session. 2 of 1974.

Procedure in case of commission of offence by child and determination of age by Special Court.

34. (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

56 of 2000.

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.

Period for recording of evidence of child and disposal of case.

35. (1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible; within a period of one year from the date of taking cognizance of the offence.

Child not to see accused at the time of testifying.

36. (1) The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.

(2) For the purposes of sub-section (1), the Special Court may record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device.

Trials to be conducted *in camera*.

37. The Special Court shall try cases *in camera* and in the presence of the parents of the child or any other person in whom the child has trust or confidence:

2 of 1974.

Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of section 284 of the Code of Criminal Procedure, 1973.

38. (1) Wherever necessary, the Court may take the assistance of an interpreter while recording the evidence of the child.

Assistance of an interpreter or expert while recording evidence of child.

(2) If a child has a mental or physical disability, the Special Court may take the assistance of a special educator or an expert in that field to record the evidence of the child.

CHAPTER IX

MISCELLANEOUS

2 of 1974.

39. Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.

Guidelines for child to take assistance of experts, etc.

40. Subject to the provision to section 301 of the Code of Criminal Procedure, 1973 the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act:

Right of child to take assistance of legal practitioner.

Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.

41. The provisions of sections 3 to 13 (both inclusive) shall not apply in case of medical examination or medical treatment of a child when such medical examination or medical treatment is undertaken with the consent of his parents or guardian.

Provisions of sections 3 to 13 not to apply in certain cases.

42. Where an act or omission constitute an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such law or this Act as provides for punishment which is greater in degree.

Alternative punishment.

43. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) Every rule made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

44. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removal of the difficulty:

Power to remove difficulties.

Provided that no order shall be made under this section after the expiry of the period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE SCHEDULE

[See section 2(c)]

ARMED FORCES AND SECURITY FORCES CONSTITUTED UNDER

- (a) The Air Force Act, 1950 (45 of 1950);
- (b) The Army Act, 1950 (46 of 1950);
- (c) The Assam Rifles Act, 2006 (47 of 2006);
- (d) The Bombay Home Guard Act, 1947;
- (e) The Border Security Force Act, 1968 (47 of 1968);
- (f) The Central Industrial Security Force Act, 1968 (50 of 1968);
- (g) The Central Reserve Police Force Act, 1949 (66 of 1949);
- (h) The Coast Guard Act, 1978 (30 of 1978);
- (i) The Delhi Special Police Establishment Act, 1946 (25 of 1946);
- (j) The Indo-Tibetan Border Police Force Act, 1992 (35 of 1992);
- (k) The Navy Act, 1957 (62 of 1957);
- (l) The National Investigation Agency Act, 2008 (34 of 2008);
- (m) The National Security Guard Act, 1986 (47 of 1986);
- (n) The Railway Protection Force Act, 1957 (23 of 1957);
- (o) The Sashastra Seema Bal Act, 2007 (53 of 2007);
- (p) The Special Protection Group Act, 1988 (34 of 1988);
- (q) The Territorial Army Act, 1948 (56 of 1948);
- (r) The State police forces (including armed constabulary) constituted under the State laws to aid the civil powers of the State and empowered to employ force during internal disturbances or otherwise including armed forces as defined in clause (a) of section 2 of the Armed Forces (Special Powers) Act, 1958 (28 of 1958).

STATEMENT OF OBJECTS AND REASONS

Article 15 of the Constitution, *inter alia*, confers upon the State powers to make special provision for children. Further, article 39, *inter alia*, provides that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

2. The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate national, bilateral and multilateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials.

3. The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the 'Study on Child Abuse: India 2007' conducted by the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the extant laws. A large number of such offences are neither specifically provided for nor are they adequately penalised. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

4. It is, therefore, proposed to enact a self contained comprehensive legislation *inter alia* to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.

5. The Bill would contribute to enforcement of the right of all children to safety, security and protection from sexual abuse and exploitation.

6. The notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives.

KRISHNA TIRATH

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 43 of the Bill provides that the Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the proposed legislation.

2. Sub-clause (2) of clause 43 provides that every rule made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.

3. The matters in respect which the Central Government may make rules are matter of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of Legislative power is, therefore, of a normal character.

V.K. AGNIHOTRI,
Secretary-General.